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this decision.¹⁴ For they emphasize the fact that notice is unnecessary in the case of an *absolute guaranty*; with the resulting implication that it may be different in the case of an offer to guarantee. The effect of these cases is at least an intimation that eventually the ruling of the Federal courts will be followed in all the states. Purely as a matter of public convenience, this would probably be a beneficial result; yet it is difficult to see how it can be justified simply on principle.¹⁵

R. T. B.

INSURANCE—IS DEATH FROM PTOMAIN POISON AN ACCIDENT?
—The usual policy of accident insurance limits the liability of the insurer, *inter alia*, to injuries or death effected through “external, violent and accidental means”; and the interpretation of this phrase has been productive of much litigation, remarkable because of the absence of conflicting decisions by the courts. This phrase, having been inserted in the policy by the insurers for the purpose of restricting their liability, is very strictly construed against them, in accordance with the usual policy of the courts in similar cases.

The words “external and violent” have had little, if any, effect upon the courts in the interpretation of the phrase, and most of the controversies have arisen over the interpretation of the word “accidental,” which was defined by the Supreme Court of the United States in the case of *Mut. Acc. Assn. v. Barry*,¹ as follows: “The term ‘accidental’ was used in the policy in its ordinary, popular sense, as meaning happening by chance; unexpectedly taking place; not according to the usual course of things; or not as expected. If a result is such as follows from ordinary means, voluntarily employed, in a not unusual or unexpected way, it cannot be called a result effected by accidental means. But if, in the act which precedes the injury, something unforeseen, unexpected, unusual occurs, which produces the injury, then the injury has resulted through accidental means.” Apparently, the word is interpreted from an objective viewpoint; that is, if the injury is unexpected and unintended by the person injured, it may be accidental as to him, though the normal result of an intentional act of another person. Thus it has been held that where one person unexpectedly, and without provocation, purposely injures another, the injury is accidental as to the person hurt.² So also, if an insane or delirious person injures himself, the

¹⁴ *Natl. Bank v. Phelps*, 86 N. Y. 484 (1881); *Niles Tool-Works Co. v. Reynolds*, 38 N. Y. Supp. 1028 (1896).

¹⁵ For a more detailed discussion see “Notice of Acceptance in Contracts of Guaranty,” 5 *Columbia Law Rev.* 215 (1905).

¹ 131 U. S. 100, 121 (1889). See also *Etna Life Ins. Co. v. Vandecar*, 86 Fed. 282 (1898); *Bailey v. Interstate Casualty Co.*, 158 N. Y. 723 (1899).

² *Hutchcraft v. Travelers Ins. Co.*, 87 Ky. 300 (1888); *Fidelity, etc., Co.*

injury is accidental within the terms of the policy, because it was not the result of his intentional act.³ An injury may also be accidental, although the direct result of an intentional act of the party injured, provided the result was unusual and not to be expected from the act done, as where the injury has been due to inadvertently taking poison in mistake for something else,⁴ because in such cases the party did not intend to take poison. It is impossible to formulate any definite rule upon this phase of the problem, because the courts have preferred to decide each case upon its individual merits, rather than by any concrete principle of law. Thus it has been held that where a person took an overdose of poison by mistake, his consequent death was accidental;⁵ but where he took only as much as he intended, not knowing that such a dose would be fatal, his consequent death was not accidental.⁶ So also death caused by the eating of unwholesome food, not known to be so, has been held to be accidental, as where the insured contracted ptomaine poison from eating mushrooms or oysters.⁷ Although death due to blood poison, resulting from a wound, or to ptomaine poison resulting from eating unwholesome food is universally held to be accidental within the meaning of the policy, death due to typhoid fever resulting from drinking polluted water, is probably not accidental, as it is caused directly by a disease which is usually expressly excepted from accident policies; and sunstroke is also considered by the courts as a disease and not an accident.⁸

The word "external," in the policy, has been construed by the courts as referring to the force and not to the injury. In other words, the injury is covered by the policy if produced by the introduction of an external force or agency into the system, although the injury itself was effected entirely internally. Thus poison, taken into the system and operating internally, is nevertheless an external cause; as, for example, the inhalation of gas producing asphyxiation.⁹ It may be stated as a general rule that if the cause of the

v. Johnson, 72 Wis. 333 (1894); *Travelers Ins. Co. v. McConkey*, 127 U. S. 661 (1888).

³ *Acc. Ins. Co. v. Crandal*, 120 U. S. 527 (1887); *Cady v. Fidelity Co.*, 134 Wis. 322 (1908).

⁴ *Healey v. Mut. Acc. Assn.*, 133 Ill. 556 (1890); *Pollock v. Mut. Acc. Assn.*, 102 Pa. St. 230 (1883).

⁵ *Carnes v. Iowa Assn.*, 106 Iowa 281 (1898); *Dezell v. Fidelity Co.*, 176 Mo. 253 (1903).

⁶ *Bayless v. Travelers' Ins. Co.*, 14 Blatchf. 143 (U. S. C. C. 1877); *Carnes v. Iowa Assn.*, *supra*, n. 5.

⁷ *U. S. Casualty Co. v. Griffis*, 114 N. E. 83 (Ind. 1916); *Md. Casualty Co. v. Hudgins*, 72 S. W. 1047 (Tex. 1902); reversed on another point. 97 Tex. 124 (1903).

⁸ *Dozier v. Fidelity & Casualty Co.*, 46 Fed. 446 (1891). See also 1 C. J. 427 for a general review of the cases.

⁹ *Paul v. Travelers' Ins. Co.*, 112 N. Y. 472 (1889).

injury or death can be shown to be due to accidental or unnatural means, this imports that such injury or death is due to external and violent means.¹⁰ Thus, where the insured was found dead in bed with the gas turned on, it was held that his death was due to external, violent and accidental means.¹¹ So also, where the insured froze to death because of a breakdown of his conveyance, and the consequent enforced exposure;¹² and also where the insured died from blood poison, resulting from the bite of an insect.¹³

The word "violent," as used in the policy, does not require that there should be a breaking of tissues of the body; and very slight violence, if any, is necessary to obtain a recovery, if the injury was accidental within the usual definition of the term. Accordingly, it has been held that recovery may be had, under the policy, for death by accidental drowning;¹⁴ or for an injury produced by a strain from lifting.¹⁵ It should be noted, however, that where there is a dormant disease, which is brought into activity by the exertions of the insured, his resulting death is not caused by external, violent and accidental means.¹⁶ This is a very troublesome class of case for the courts to decide. The general rule seems to be that if the disease was due solely to an accidental cause, as ptomaine poison from unintentionally eating unwholesome food, then the resulting death is covered by the policy. But if there was some latent constitutional weakness in the insured, which was so stimulated by his exertions, as to unexpectedly produce his death, there can be no recovery under the policy, because, in such case, the exertion of the insured was not the direct and potent cause of his death. In close cases, the general principle is very difficult of application, and the courts frequently treat it as a matter of fact for the jury to determine.¹⁷

E. L. H.

MORTGAGES—ASSUMPTION BY MORTGAGOR'S GRANTEE—LIABILITY TO MORTGAGEE—It goes without saying that there are few questions in the common law concerning which there has been so great a diversity of opinion as that of the right of a third party to sue on a contract made for his benefit. One phase of this question is that of the liability of a grantee of land subject to a mortgage, who un-

¹⁰ *Travelers' Assn. v. Smith*, 85 Fed. 401 (1898); *Bacon v. Mut. Acc. Assn.*, 123 N. Y. 304 (1890).

¹¹ *Paul v. Travelers' Ins. Co.*, *supra*, n. 9, overruling in part *Hill v. Hartford Ins. Co.*, 22 Hun 187 (N. Y. 1880).

¹² *Travelers' Assn. v. London Guarantee Co.*, 10 Man. 537 (Canada 1895).

¹³ *Omberg v. Mut. Acc. Assn.*, 101 Ky. 303 (1897).

¹⁴ *Mfrs. Acc. Indem. Co. v. Dorgan*, 58 Fed. 945 (1893); *Wehle v. Mut. Acc. Assn.*, 153 N. Y. 116 (1897); but see *Tennant v. Travelers' Ins. Co.*, 31 Fed. 322 (1897).

¹⁵ *Rustin v. Ins. Co.*, 58 Neb. 792 (1899).

¹⁶ *Travelers' Ins. Co. v. Selden*, 78 Fed. 285 (1897).

¹⁷ *Mfrs. Acc. Indem. Co. v. Dorgan*, *supra*, n. 14; *Railway Acc. Assn. v. Coady*, 80 Ill. App. 563 (1899).